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OFFICE OF PETITIONS

In re Application of	:
Maurice R. De Billot et al	:
Application No. 10/026,301	:DECISION DISMISSING
Filed: December 19, 2001	:PETITION UNDER 37 CFR
Attorney Docket No. 17396/09015	:1.137(f)

This is a decision on the petition, filed by facsimile transmission on April 28, 2003; to revive the instant nonprovisional application under the unintentional provisions of 37 CFR 1.137(f).

The petition is DISMISSED.

Petitioner states that the instant nonprovisional application is the subject of applications filed in foreign countries on December 17, 2001, December 20, 2001, and December 21, 2001. However, the U.S. Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in a foreign country.

A review of the file record discloses that, on filing, petitioner filed a "Request to Rescind Previous Nonpublication Request." The record also discloses that, on September 11, 2002, petitioner filed a request for a Corrected Filing Receipt in view of the fact that a request to rescind a previous nonpublication request was submitted at the time of filing of the application rather than a request for nonpublication under 35 U.S.C. § 122(b)(2)(B)(i).

The statute at 35 U.S.C. § 122(b)(2)(B)(iii) only provides for revival in the situation where a certification was made under 35 U.S.C. § 122(b)(2)(B)(i) at the time of filing the application and an application was subsequently filed in a foreign country without notifying the Office within 45 days of the filing thereof. Therefore, since petitioner did not file a nonpublication request on filing of the instant application, this application did not become abandoned for failure to notify the Office of a foreign filing within 45 days thereof. Accordingly,

a petition to revive this application is unnecessary and is dismissed as involving a moot issue.

Any inquiries concerning this decision may be directed to the undersigned at (703) 305-8680.

This application is being forwarded to Technology Center Art Unit 1616 to take appropriate action on the reply received April 28, 2003 to the Office action of March 26, 2003.



Frances Hicks  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy